

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

MAR 20 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0344-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
EUGENE HARVEY GLOVER,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
	)	

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20022308

Honorable Paul E. Tang, Judge

REVIEW GRANTED; RELIEF DENIED

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DiCampli & Elsberry, L.L.C.  
By Anne Elsberry

Tucson  
Attorneys for Petitioner

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P E L A N D E R, Chief Judge.

¶1 Petitioner Eugene Harvey Glover was convicted after a jury trial of possession of methamphetamine for sale, possession of cocaine for sale, possession of cocaine base for sale, and possession of drug paraphernalia. The trial court sentenced him to concurrent, aggravated prison terms of eighteen years on the drug possession convictions and four years

on the drug paraphernalia conviction. This court affirmed the convictions and sentences on appeal. *State v. Glover*, No. 2 CA-CR 2003-0091 (memorandum decision filed Mar. 31, 2004).<sup>1</sup> Our mandate was issued on July 26, 2004. Glover then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., claiming that, based on *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), his rights under the Fifth and Sixth Amendments to the United States Constitution were violated because the trial court, rather than a jury, found the facts it had relied on to impose aggravated prison terms; the state incorrectly had initially alleged only one prior felony conviction to enhance the sentences; he had not intelligently rejected the plea agreement the state had offered him before trial; and trial counsel had been ineffective because she told the jury during her opening statement that Glover would testify and what that anticipated testimony would be, and he did not testify after she advised him not to. The trial court denied relief after an evidentiary hearing, and this petition for review followed.

¶2 We will not disturb a trial court's denial of post-conviction relief absent an abuse of discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). That court's minute entry is thorough, well-reasoned, and correct, based on the record

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<sup>1</sup>On appeal, Glover claimed the trial court had erred when it denied his motion to suppress evidence; there was insufficient evidence to support the convictions; fundamental error had occurred when a police officer gave expert testimony; and the sentences were illegal.

before us. To a large degree, the court's rejection of the claim that trial counsel had been ineffective for mentioning to the jury that Glover would testify when, ultimately, he did not, and his claim, based on *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000), that he had not intelligently rejected an offered plea agreement, were based on the court's resolution of conflicting testimony at the Rule 32 evidentiary hearing. It was for the trial court, not this court, to resolve such conflicts in the evidence. *See State v. Estrada*, 209 Ariz. 287, ¶ 22, 100 P.3d 452, 457 (App. 2004). The court stated in its minute entry that it did not find Glover credible. We will not interfere with that assessment. *See id.* Crediting the testimony of trial counsel, as the court obviously did, the denial of post-conviction relief was not an abuse of discretion.

¶3 We adopt the trial court's order and see no purpose in rehashing that order here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Therefore, we grant the petition for review but deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge